

**B. The Commission's Blanket Prohibition of the Possession of Multiple Toll free Numbers Ignores Pro-Competitive Business Realities and the Existence of a Necessary, Well-Established, and Burgeoning Secondary Market for Small Businesses.**

The primary objection to the *Second Report and Order* by small businesses is its blanket prohibition, less one ambiguous exemption,<sup>42</sup> of the possession of more than one toll free number. The record is replete with examples of previously legal, reasonable, and productive use of multiple toll free numbers, all of which serve the public interest.<sup>43</sup>

**1. The Origin and the Importance of the Secondary Market.**

Toll free use also involves the provision of toll free service by entities that are not telecommunications companies, telephone companies, paging, cellular, and PCS providers, or Resp Orgs (which are often subsidiaries of telephone companies). The variety of private entities that also provide access to a toll free number, (either by sale or lease) are loosely classified as the secondary market. By enactment of the Telecommunications Act of 1996 ("1996 Act"), Congress envisioned private sector deployment, which includes small businesses, as a means to "open[ ] all telecommunications markets to competition."<sup>44</sup> This certainly includes toll free service.

The Commission has not explained in the substantive body of the *Second Report and Order*, nor the FRFA, how the *ex post facto* finding of illegality for the sale of a toll free number or the possession of multiple toll free numbers, including the provision of

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<sup>41</sup> See e.g., Comments of International Trademark Association, Aug. 28, 1996; Vanity Int'l Petition, at 4-5; Lisa Dame Olcott, *Confusingly Dissimilar Applications of Trademark Law to Vanity Telephone Numbers*, 46 Cath. U. L. Rev. 101, 105 (1997).

<sup>42</sup> The Commission recognizes Telemarketing Service Bureaus as providing "legitimate" services when they are not "merely buying and selling numbers." *Second Report and Order*, para. 40.

<sup>43</sup> See e.g., ICB Petition, at 6-8.

<sup>44</sup> S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong. 2d Sess. 1 (1996) (emphasis added).

forfeitures and criminal sanctions for hoarding and brokering, serves to “accelerate[s] rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . .”<sup>45</sup> Neither has the Commission fully explained nor justified how the elimination of businesses engaged in the secondary market deplete an allegedly scarce resource and/or do not serve the public interest.<sup>46</sup> Advocacy asserts that this *Second Report and Order* is in direct contradiction to the congressional intent of the 1996 Act to foster competition in all telecommunications markets.

There is little dispute amongst the advertising and marketing trade that toll free numbers, especially vanity numbers, are a valuable asset in the marketing and business operations of a company. “800 [vanity] numbers are the crown jewel of marketing.”<sup>47</sup> Large companies have used vanity 800 numbers for many years.<sup>48</sup> Today, large and small companies use 800 vanity numbers as a foundation of their marketing plans or as virtual storefronts for their business.<sup>49</sup>

Developing a marketing and advertising plan, then finding the right vanity number that complements that plan is no small task.<sup>50</sup> Hence, the emergence of an innovative secondary market of small businesses that includes consulting, marketing, advertising, public relations, consumer research, and toll free number search services to clients that

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<sup>45</sup> *Id.*

<sup>46</sup> Advocacy does not agree that toll free numbers are a scarce resource. Unlike electromagnetic spectrum which is finite, toll free numbers are plentiful with the change in one digit, i.e. 888, 887, 886, etc. We do acknowledge that there are limited quantities of “premium” toll free numbers. Such numbers include the original 800 code which has much higher consumer awareness and familiarity than subsequent codes, and mnemonic combinations for vanity numbers.

<sup>47</sup> Jennifer Oldham, *Toll Free Numbers Crunch Brings Snafus, Calls For Change*, L.A. Times, Nov. 11, 1997 (quoting Jeffrey Kagan, president of consulting firm Kagan Telecom Assoc.); see also, Sally Goll Beatty, *800-Number Marketers Dial 888-Not-Fair*, Wall St. J., Mar. 7, 1997, at R6.

<sup>48</sup> Jeffrey Kagan, *Winning Communications Strategies* 87 (1997).

<sup>49</sup> *Id.* (citing to 1-800-FLOWERS); see also Vanity Int’l Petition, at 1; NIMA Comments, at 1; DMA Comments, at 3-5.

request a specific vanity number. The FCC has acknowledged that the 800 pool is almost exhausted and 888 numbers are soon to follow. A Resp Org, although with exclusive access to unsubscribed toll free numbers in the Service Management System Database (SMS Database), does not have access to the millions of numbers that have already been allocated. Obviously, the preferred vanity number may not be available through a Resp Org.

Given the large pool of numbers that were already allocated to subscribers and the enormous amount of time and transaction costs incurred by a business to undertake a search for the requested number on its own, these small businesses not only provided a legal service but a service that was necessary given the needs of the marketplace. The marketing firm, advertising agency, public relations firm, telemarketing service bureau (*see supra* Section I. B. for a more complete list) would search for the desired number in Resp Org pools and amongst current subscribers. Once the number was located, the secondary market provider would negotiate with the private entity, either a business or individual, for the number.

Today, due to the growth of toll free numbers, the desired vanity number is often being used by a person that simply needs toll free access and has no need for a premium number. For example, a farmer in Iowa could have the numerical equivalent of the next 1-800-FLOWERS. The farmer uses the number for his college children to call home or for his farming operations. He only needs toll free access and does not need a specific number. The new business, or its agent (i.e., secondary market provider) completes a private sales (or lease) transaction with the farmer to secure the use of the toll free number

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<sup>50</sup> For more information on the services of firms on the secondary market, please see ICB Petition. NIMA

- the ideal number which was based on extensive marketing and business plans. These negotiations provide a means for the farmer to be compensated for his own value of the number and covers the costs he incurs in securing a new number. This is a reasonable transaction between private parties that enables the toll free number to go to the person that values it the most.

Necessity is indeed the mother of invention and the growing desire for vanity numbers provided an ideal opportunity for small businesses to serve this niche market since the carriers and Resp Orgs could not. The small businesses that are involved in these transactions, as either buyer or seller, are not hoarding nor speculating, but contributing handsomely to the nation's economy. For example, the television infomercial industry generates over four billion dollars in sales annually.<sup>51</sup> Catalog sales this year are expected to increase between 12-15% over last year, generated by 220 million phone calls to toll free numbers. Overall, small businesses are collectively the engine that is driving the nation's robust economy. Small business provides virtually all of the net new jobs, represents 99.7% of all employers, employs 53% of the private work force, and generates 47% of sales receipts, just to name a few benefits.<sup>52</sup>

In the increasingly competitive advertising field, and 500 channel universe for advertising, the desire for premium toll free numbers has not lessened, it has only increased. Vanity numbers are expected to be in even greater demand for years to come as an indispensable marketing tool. Unfortunately, the plain language of Section 52.107 makes the sale of a number by a private entity illegal, even if the seller did not initiate the

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Comments: DMA Comments.

<sup>51</sup> NIMA Comments, at 1.

<sup>52</sup> U.S. Small Business Administration, Small Business Answer Card 1997.

sale or acquired the number without the intent to sell it. In light of the three-fold increase in the amount of numbers, this prohibition will not only destroy the small businesses that have made their livelihood on the secondary market - but will also stifle the advertising and marketing industries as well because these entities cannot fully serve their clients. The record evidence confirms that Section 52.107 is simply not practical given the realities of the business world.<sup>53</sup>

**C. The Commission Should Define Telemarketing Service Bureaus and Explicitly Exempt All Entities that Provide Collateral Services From the Rule Which Prohibits Brokering and Hoarding.**

In the *Second Report and Order*, the Commission stated “to the extent that telemarketing service bureaus [TSB] are performing legitimate services, and not merely buying and selling numbers” such activity would be exempt from the prohibition from hoarding and brokering.<sup>54</sup> However, the FCC neglected to define TSBs and, moreover, did not explicitly exempt TSBs in the plain language of the final rule. *See* 47 C.F.R. § 52.107.

There are many types of businesses, including small businesses, that provide collateral services other than the mere buying and selling of numbers.<sup>55</sup> These businesses include, but are not limited to the following: advertising agencies, marketing consultants, public relations firms, and shared-use providers.

The traditional TSB is a private entity (not a carrier or a Resp Org) that leases access to its stable of toll free numbers to third party clients and provides toll free numbers

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<sup>53</sup> *See e.g.*, ICB Petition, NATE Further Comments, NIMA Comments, Tellnet Comments.

<sup>54</sup> *Second Report and Order*, para. 40.

<sup>55</sup> We reiterate that the buying and selling of toll free numbers was a legal activity prior to this rule. Businesses engaged in this activity are no less “legitimate” than a telemarketing service bureau.

for placement in direct response commercials, operator service for consumer orders, and/or the monitoring/tracking of advertising activity. The toll free number is usually provided to the client by the TSB. The TSB remains the subscriber. Some TSBs provide commercial production services as well.<sup>56</sup>

However, it is often more cost effective for a business to possess its own toll free numbers and do its own tracking of sales or business activity in-house, particularly as part of an overall marketing plan that includes use of vanity numbers that brands the business to the public. This small business provides a form of telemarketing service, but does not use a traditional full-service TSB. These small businesses subscribe to multiple telephone numbers as a necessity. For example, one toll free number is used for advertising campaign on the west coast and another number is used for a campaign on the east coast. Separate numbers may reflect not only different geographic areas but different products, or different marketing plans which reflect varied consumer tastes and buying habits.

Another valuable service for toll free numbers is provided by the "shared-use" industry. There are two forms of shared use: 1) toll free calls that are routed directly to a call center/clearinghouse on behalf of several businesses (i.e. customer referral services such as 1-800-DENTIST), and 2) one toll free number that is used by several businesses, but exclusively in different geographical areas (i.e. 1-800-FIX-AUTO is used by three independently-owned auto repair shops located in Chicago, Detroit, and Baltimore.) In both forms, the subscriber of record of the toll free number may not necessarily be located in the same city of the businesses using the number. It is possible that the shared-use

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<sup>56</sup> For more information, see the comments of the Direct Marketing Association and NIMA International, Inc.

provider will also sell the number to the businesses using the toll free number, but maintain service on the calling activity.

Shared-use is an innovative and efficient use of toll free numbers. Advocacy estimates that there are several hundred shared-use providers. (Additional statistics are not available at this time.) Neither form serves to exhaust the supply of toll free numbers, in fact, quite the contrary. However, under Section 52.107, businesses that offer shared-use, if such use involves multiple numbers, or the sale of a number, these providers are deemed to be violating the Commission's rules and are subject to termination of their service. If the Commission persists in branding the possession of multiple numbers illegal, what is to become of doctor or dentist referral services that are provided by a call center/clearinghouse with multiple numbers?

**1. The Proper Test of Non-Compliance With FCC Rules Should Be The Measurement of The Behavior of A Toll Free Subscriber and Not Mere Possession of Multiple Numbers.**

Advocacy respectfully requests that the Commission re-evaluate the policy regarding multiple ownership of toll free numbers and adopt rules that use behavior as a trigger for identifying illegal hoarding of toll free numbers. We find it very compelling that traditional toll free providers who plan to fully enforce the FCC's rules have detailed what behavior to look for if a customer is engaged in hoarding and brokering toll free numbers.<sup>57</sup> Such behavior may include a "[c]ustomer request for a large amount of numbers compared to their business needs (i.e. they are not a paging, telemarketing or similar company) . . . [o]r customer frequently adds and/or changes toll free numbers."<sup>58</sup>

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<sup>57</sup> See e.g., CWI News Bulletin (Appendix A).

<sup>58</sup> *Id.*

Critics may argue that reporting suspected behavior would be administratively burdensome and that the possession of multiple numbers is easier to ascertain, monitor, and report. Conversely, it is this ease of prosecution that the Commission should protect against because if the termination of an account or number, or the imposition of forfeitures, or criminal penalties is the ultimate punishment, Advocacy believes that the threshold of a finding of guilt should be substantially higher.

In summary, there are many legitimate reasons why a business would have multiple toll free numbers. Many of these decisions are of a proprietary nature to the business and, Advocacy believes may be outside of the scope and authority of the Commission under the Communications Act of 1934, as amended. Therefore, outrageous behavior should be the triggering mechanism, not the mere possession of multiple numbers. Even a measurement of behavior will need adequate due process to provide the suspected business an opportunity to explain its behavior.

**D. The Rebuttable Presumption and Prohibition of the Possession of Multiple Toll Free Numbers Creates a Dangerous Potential for Unjust or Unreasonable Discrimination and Selective Enforcement Against Small Businesses End-Users.**

The Commission's prohibition of the possession of multiple toll free numbers is not only unrealistic in the context of normal business practices but discriminatory to businesses as a whole. It is not as likely that individuals would have multiple numbers. Therefore, business are more likely to be subject to penalties. Small businesses are aggrieved even more. The Commission's rebuttable presumption and pre-determined regulatory outcome gives an unrestricted license to a toll free provider to terminate arbitrarily a small business



subscriber's service without proper cause or due process. The record evidence fully supports this dangerous consequence of the *Second Report and Order*.<sup>59</sup>

It is important to recognize that the business of telecommunications is evolving rapidly and dramatically. The passage of the 1996 Act has created the opportunity for telecommunications providers to offer the convenience of one-stop shopping and bundling of multiple customer products and services.<sup>60</sup> Such bundling may include local and long distance service, paging, cellular, and toll free service (i.e., MCI One).

Toll free carriers and their affiliated Resp Orgs naturally operate in their best interests and not necessarily in the interest of the end user. Advocacy applauds those carriers that find that enforcement of the rebuttable presumption and mandatory termination of toll free service for suspected hoarders is "unnecessary and unreasonably burdensome."<sup>61</sup> However, we are not confident that under the right circumstances (i.e., a request for a specific vanity number from a high volume business user that is already assigned to a smaller subscriber), that even MCI would not flex its corporate muscles and attempt to recapture a desirable number from a small business customer that happened to have more than one toll free number, albeit for "legitimate" purposes.

Although 94.9% of all reporting firms in the United States are small with less than \$5.0 million in annual gross revenue,<sup>62</sup> large business customers historically have been the most desirable type of customer given a high volume of calls and the need for multiple

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<sup>59</sup> See e.g., ICB Petition, at 10-11; MCI , at 3; NATE Further Comments, at 6; Tellnet Comments, at 2; Vanity Int'l Petition, at 1.

<sup>60</sup> Jeffrey Kagan, *Winning Communications Strategies* 62 (1997).

<sup>61</sup> MCI Reply Comments, at 2.

<sup>62</sup> 1992 Economic Census, U.S. Bureau of the Census, Special Tabulation of Census Data under contract to the U.S. Small Business Administration. Also significant is the fact that 50% of small businesses in the country have zero net income or profits. 1993-94 Statistics of Income (SOI).

telecommunications services. Toll free carriers are primarily interested in how much money a particular number will generate in subscription fees.<sup>63</sup> It is a simple reality that small business and residential customers are not as desirable as large business customers. This is a truism that has troubled and challenged the Commission, Congress, and the industry throughout history (i.e., Universal Service).

Advocacy also questions whether large business subscribers will receive the same degree of scrutiny of the possession of multiple numbers in its toll free account from its toll free provider that small businesses will likely receive. It is doubtful that carriers will be as quick to terminate the number or the account of its large subscriber, if at all. Therefore, there is the great potential for discriminatory and selective enforcement of the Commission's rules against small businesses.

**E. The Significant Costs Imposed on A Small Business In Order to Rebut The Presumption That It Has Violated FCC Rules is Extremely Burdensome.**

Advocacy recognizes that the presumption of a violation of FCC rules is only a *prima facie* finding, and therefore, is rebuttable. Nonetheless, "rebuttable" at what cost to a small business? Advocacy shares the concerns of several commenters that the realistic threat of having a carrier terminate service to a toll free number(s) or worse yet, an entire account, has substantial consequences for both the carrier and the subscriber.<sup>64</sup> The loss of a toll free telephone number by regulatory mandate would be major blow to a small

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<sup>63</sup> See *Play Time, Inc. v. LDDS Metromedia Communications, Inc.*, 123 F.3d 23, 26 (1<sup>st</sup> Cir. 1997) (reporting WorldCom Vice President's question of "how much money the Number could be expected to produce" upon being informed that a desirable vanity number had been taken from a family-owned business that was first to request the number from WorldCom's Resp Org). *Id.* The likelihood of insignificant revenue was a primary factor in the Vice President's refusal to address the problem. *Id.*

<sup>64</sup> MCI Reply Comments, at 3 (citing to the carrier's exposure to "liability for a myriad of violations, including interference with business relationships breach of contract"); NATE Petition, at 1 (violation of

business that uses its number in the course of business. Such termination would cause a loss of customers, a loss of investment, and a potential loss of goodwill and reputation. Because a finding of hoarding or brokering numbers carries additional penalties such as civil forfeitures and ultimately, criminal sanctions,<sup>65</sup> it is absolutely necessary for a small business to defend itself against any complaint which could subject it to an investigation by the FCC or the United States Department of Justice.

Congress recognized that “the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity.” 5 U.S.C. § 601(4) (emphasis added). Therefore, it is critical to recognize the differences in resources and ability for a small business to defend itself against even a preliminary complaint. An adequate defense requires a small business to expend a great deal of time, time away from its business, to address the issue. Retention of legal counsel may also be necessary. The Commission’s unreasonable placement of the burden of proof on the subscriber and its subsequent failure to recognize the cost of defense against the rebuttable presumption has hampered, if not eliminated, the ability of small businesses to function effectively in the course of their business.

### **III. The Commission’s Definition of Hoarding and Brokering is Impermissibly Vague and Overreaching and Therefore, Violates Due Process.**

The Office of Advocacy concurs with other commenters that the Commission’s definition of “hoarding and brokering” is vague and insufficient to provide advance

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due process to allow disconnection of numbers and service without notice and hearing); ICB Petition, at 8 (noting the inherent tension and conflict between large carriers and their customers).

<sup>65</sup> *Second Report and Order*, para. 42

notification of what behavior will be subject to sanctions.”<sup>66</sup> “The constitutional proscription against vague law is ‘a basic principle of due process.’”<sup>67</sup> The standards set forth in Section 52.107 are not clear enough “to curb the danger of arbitrary or discriminatory enforcement.”<sup>68</sup>

For example, the Commission defines hoarding as “the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service.” 47 C.F.R. § 52.107 (emphasis added). Advocacy is concerned about the “intends to use” part of the definition. The phrase is impermissibly vague and subjects a small business that uses its number sporadically or a new business that does not have many toll free calls to be presumed to be in non-compliance of Section 52.107 by its carrier or the FCC.

A business “intends to use” its toll free number for the provision of toll free service in many ways. A number is used not only in the delivery of voice communications from one party to another, but also in the advertising of a business’ services including yellow page advertising, business cards, and radio/television commercials. Advertising a toll free number clearly denotes the intent to use the number for the provision of toll free service. Additionally, the amount of call activity should not be the measure of whether a number is “used” or not.<sup>69</sup> Such an arbitrary measurement is discriminatory to new businesses that do not receive a great deal of telephone calls or businesses that are not very successful in

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<sup>66</sup> See e.g., MCI Reply Comments at 3 (also citing Toll Free Referrals Co. Petition For Reconsideration, at 2); NATE Further Comments, at 2-3.

<sup>67</sup> *Information Provider’s Coalition for Defense of the First Amendment v. FCC*, 928 F.2d 866, 874 (9<sup>th</sup> Cir. 1991) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

<sup>68</sup> *Id.*

<sup>69</sup> *Second Report and Order*, para. 40.

attracting customers. If a business advertises its telephone number, Advocacy believes that should be sufficient indication of its intent to use its toll free number.

Proper “use” of a toll free number also should not be measured whether or not there is continuous calling activity on the account. A business may use its toll free number only during certain times of the year, on a seasonal basis such as for Christmas or Easter Holidays. Advertising campaigns are often flighted (i.e., scheduled for intermittent periods throughout the year). Toll free numbers may also be used for an occasional sweepstakes or contest. A sad reality of our times is the need for a toll free number that the public can use for crisis intervention, i.e., food tampering, or child kidnapping cases. Both of the aforementioned uses may be sporadic or limited, but very important to a business and the public it serves. Under Section 52.107, if Tylenol had one toll free number for an advertising promotion and it needed to acquire a second number to be used for a public safety warning (i.e., cyanide tampering outbreak), Tylenol would be presumed to be operating outside the law and would have its service terminated. It is simple to propose a public safety exception from terminating a subscriber’s service, but how would the toll free carrier know of the use of the two numbers? Further investigation by the carrier of whether a subscriber was using the number “legitimately” or not raises additional constitutional issues of equal protection, right to privacy, and freedom of speech.

The *NPRM* defined hoarding as a “toll free subscriber acquiring more numbers from a Resp Org. than it intends to use immediately.”<sup>70</sup> The *Second Report and Order* did not adopt this exact definition, but neither did it negate it. Advocacy seeks clarification on whether use is measured by “immediate” terms and if so, then requests reconsideration.

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<sup>70</sup> *Id.* para. 33 (citing *NPRM* at 13701 n.72) (emphasis added).

The term “immediately” is not self-defining and therefore, is also vague and subject to different interpretations by reasonable persons. The common language definition of immediately is “directly; without delay.”<sup>71</sup> Does this mean use of a toll free number is required within a day, week, or month after acquisition of the number from a Resp Org? Does immediate use require an actual telephone call to be placed on the account, or is the inclusion of the number on a business card or advertising campaign sufficient? Given the advance preparation it takes to conduct normal business activity that involves a toll free number, such as advertising, marketing campaigns, catalogs, or more basically, the start-up of a new businesses - are these business activities considered a “delay” in using the number, subjecting the subscriber to immediate termination? “Immediate use” is not a practical nor valid measurement of whether an end user is guilty of hoarding or brokering a toll free number.

The Commission’s definition of hoarding also includes number brokering, “which is the selling of a toll free number by a private entity for a fee.” 47 C.F.R. §52.107 (emphasis added). As discussed *supra*, there are many legitimate services that require a sale or lease private party transaction for a toll free number. Moreover, some toll free carriers now tie the assignment of a requested toll free number with extensive service contract requirements. How is this implicit payment for a toll free number any different in effect from the commission’s prohibition on “selling for a fee” by a private entity? Is a carrier considered a “private entity?” Is the prohibition of brokering and hoarding by private entities discriminatory? Is the seller still subject to termination if a seller did not

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<sup>71</sup> The American Heritage Dictionary of the English Language, Second College Edition (William Morris ed. Houghton Mifflin Company 1976).

initiate the sale, nor had the intent to sell the number when first acquired? Is a buyer of a number also subject to the rule?

The record evidence illustrates that there are many valid reasons for one person possessing multiple toll free numbers, none of which promote the inefficient use of toll free numbers. Therefore, the blanket prohibition of multiple toll free numbers has no rational basis to the Commission's asserted objective of efficiency.

#### **IV. The Enforcement of the Rebuttable Presumption and Mandatory Service Termination Policies Must Be Undertaken by the Commission And Not At the Discretion of A Carrier or Resp Org.**

Advocacy joins other commenters in its concern that carriers/Resp Orgs must not have the unrestricted power to terminate the service or account of a subscriber without notice and a formal determination by the Commission that a subscriber is indeed guilty of illegal behavior.<sup>72</sup> The Commission has stated that a "subscriber's service provider must terminate toll free service," if a subscriber is presumed to be hoarding toll free numbers.<sup>73</sup> However, the Commission must establish due process measures before such termination by the carrier. This process must include a fair and administratively easy process for the accused end user to defend itself against the carrier and the FCC, and the requirement that a legal pronouncement of a violation of the Commission's rules prior to termination of the service is necessary. Advocacy also requests a clarification of whether "service" is defined as termination of the toll free number, or the entire toll free account.

There is too great a danger for large toll free carriers and Resp Orgs to use their market power unduly against small business end users to serve that carrier's or Resp Orgs'

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<sup>72</sup> See e.g., ICB Petition, at 10-11; MCI Reply Comments, at 3.

<sup>73</sup> *Second Report and Order*, para. 42

natural self-interests.<sup>74</sup> Advocacy is aware of instances where small businesses have been threatened with the termination of their account as a means to get their toll free numbers, supposedly under color of FCC authority, even before this rule was promulgated.<sup>75</sup> Unfortunately, these abused small businesses will not go on the record for fear of retaliation by their carrier. Nonetheless, the danger is very real and the Commission is quite aware that undue use of market power by a large telecommunications carrier is difficult to monitor, and police. Therefore, we request that the Commission revise its requirement that a service provider must terminate its subscriber's toll free service to include protective measures that will ensure adequate due process.

## V. Conclusion

As the forgoing comments make clear, Section 52.107 promulgated in the *Second Report and Order*, will adversely affect several classes of small businesses in a variety of ways. In its practical application, this rule is unduly burdensome and discriminatory on small business end users and small businesses engaged in the secondary market.

Therefore, the Office of Advocacy respectfully requests 1) that the Commission grant the Petitions for Emergency Stay;<sup>76</sup> 2) rescind Section 52.107 in its entirety and issue a revised proposed rule in a Further Notice of Proposed Rulemaking, that will be less harsh in meeting the Commission's objectives of efficient toll free service. In its reconsideration of the rule, Advocacy respectfully recommends that the Commission 1) eliminate the rebuttable presumption that the mere possession of multiple toll free numbers indicates illegal behavior; 2) revise or clarify its definition of "hoarding" and

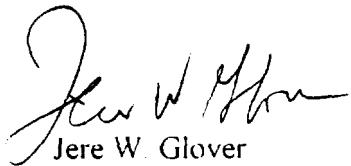
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<sup>74</sup> See e.g., NATE Petition, at 3; ICB Petition, at 8-9.

<sup>75</sup> See also, NATE Petition, at 3.

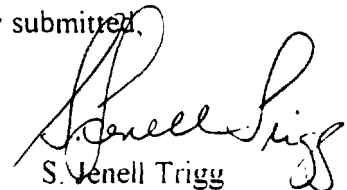


"brokering" to eliminate impermissible vagueness; 3) explicitly exempt all entities that provide "collateral" services such as shared-use, telemarketing, advertising, and marketing consulting services from Section 52.107; and 4) adopt protective measures, pursuant to due process, that give the Commission sole enforcement authority of pronouncing illegal behavior and executing a termination policy.



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Respectfully submitted,



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December 12, 1997

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<sup>70</sup> See NATE Emergency Petition and Vanity International Petition for Stay and Reconsideration.

# Sales Bulletin



## FCC Adopts New Rules Regarding The Brokering Of Toll-Free Numbers!



The FCC has issued a new ruling officially outlawing the brokering (selling) and hoarding of toll-free numbers and it has established penalties for carriers and subscribers engaging in these practices. Penalties can include fines up to \$1 million per violation, imprisonment, and possible decertification as a Responsible Organization (RespOrg). *CWI will terminate service to any subscriber violating this order.*

### ■ What Are Signs Of Potential Brokering And Hoarding?

- Customer requests a large amount of numbers compared to their business needs (i.e. they are not a paging, telemarketing or similar company)
  - ⇒ These numbers all point to the same location
  - ⇒ And there is very little traffic over these numbers
- Or customer frequently adds and/or changes toll-free numbers

### ■ How Is CWI Responding and What Are Your Responsibilities?

CWI will identify existing accounts and monitor new accounts for signs of potential abuse. If any of your accounts appear to have activities which are not consistent with the FCC's new rules, Customer Satisfaction will contact you for additional information about the customer's activities. Please talk to the customer at a high level on the use of the toll-free numbers, enter a note ticket stating the conversation and provide the information to the Toll-Free Group. If you cannot provide any information to clarify the customer's use of the toll-free numbers, Customer Satisfaction will notify the Regulatory Affairs department and copy Corporate GBD Sales. The following process will be followed:

- **Notifying Existing Customers:** Regulatory Affairs will send existing suspect customers a letter explaining that they have been identified as having patterns which are not consistent with the FCC's new rules. The letter will ask the customer to port their numbers to another carrier to avoid disconnection.
- **Notifying New Customers:** Customer Satisfaction will inform the sales rep that accepting a suspect account may violate CWI policy and will decline the account.

***If you know of or see any signs of brokering and hoarding by CWI customers, notify Christa Kasekamp, Mgr. of Customer Satisfaction's Toll-Free Group, at 703-760-7975.***

For more information, please contact the Marketing Hotline through MSMail or call 1-800-899-0800.

7/17/97

# Tellnet Communications, Inc.

Toll Free: 1-888-TELLNET

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## FACIMILE

TO: Tenell Trigg  
Attn: U.S. Small Business Adm. (SBA)  
Office of Advocacy (OOA)  
Ref: FCC Rule 52.107 petition

PHONE: 202 - 205 - 6950

FAX: 202 - 205 - 6928

FROM: Walt Hart

DATE: 10/17/97

REF: Definition of a Telemarketing Service Bureau (T.S.B.)

A business that provides other businesses with a variety of marketing, advertising and communications services. The T.S.B. will have expertise to help his clients develop and maintain the highest and best use of today's modern telecommunications and telemarketing technologies. These technologies are primarily related to telephone, television and internet computer related services that specialize in one or more of the following areas:

Call centers, information bureaus, fulfillment centers, directory services, answering services, telecommunication consultants, advertising agents and marketing firms, internet services providers, telecom & computer related hardware, software, program designers, registry services. Additionally these T.S.B.'s independent brokers, agents and sub-agents would be considered T.S.B.'s. All of these businesses are evolving into mixed combinations and methods of providing competitive enhanced interactive messaging and menu services using user friendly phone numbers, phone names, web addresses and email addresses to ensure their clients have a competitive marketing program.

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